IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 9TH JANUARY 2007 / 19TH PAUSHA 1928

WP(C).No. 14043 of 2006(V)

PETITIONER:

VEENA.P., AGED 22 YEARS,
D/O.P.V.ACHUTHAN NAMBIAR, ASSISTANT TEACHER,
CHERUPAZHASSI A.L.P.SCHOOL, P.O.CHERUPAZHASSI,
(VIA) KOLANCHERRY, KANNUR DISTRICT.

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:
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1. THE STATE OF KERALA, REPRESENTED
BY THE PRINCIPAL SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
TRIVANDRUM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHY, TRIVANDRUM-14.

3. THE DEPUTY DIRECTOR OF EDUCATION,
KANNUR, P.O.KANNUR-2.

4. THE DISTRICT EDUCATIONAL OFFICER,
KANNUR, P.O.KANNUR-2.

5. THE ASSISTANT EDUCATIONAL OFFICER,
TALIPARAMBA SOUTH, P.O.TALIPARAMBA,
KANNUR DISTRICT.

6. SRI.P.C.SUDHEER, S/O.C.O.BALAKRISHNAN
NAMBIAR, PALAKKAL CHIDAYIL, P.O.CHERUPAZHASSI,
KANNUR DISTRICT.

7. THE MANAGER, CHERUPAZHASSI A.L.P.
SCHOOL, P.O.CHERUPAZHASSI, (VIA) KOLACHERRY,
KANNUR DISTRICT.

ADDITIONAL RESPONDENT

8. SREEJITH KUNHIKKANDY
S/O NARAYANAN
KUNHIKKANDY HOUSE,
P.O. CHATTUKAPARA, KANNUR DISTRICT

Additional respondent is impleaded vide order dated 17-07-06 in I.A.No.9393/06

BY ADV. SRI.P.M.PAREETH
SRI.P.M.PAREETH
SRI.P.M.PAREETH
GOVERNMENT PLEADER SRI.T.T.MUHAMMED

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE ORDER OF APPOINTMENT OF THE PETITIONER ALONG WITH STATEMENT OF CHANGE OF STAFF AND DECLARATION.**
EXT.P2	**TRUE COPY OF THE TEACHERS ATTENDANCE REGISTER FOR THE MONTH OF NOVEMBER, 2004**
EXT.P2(A)	**TRUE COPY OF THE -DO- FOR THE MONTH OF DECEMBER 2004**
EXT.P2(B)	**TRUE COPY OF THE - DO- FOR THE MONTH OF JANUARY 2005**
EXT.P2(C)	**TRUE COPY OF THE -DO- FOR THE MONTH OF FEBRUARY 2005**
EXT.P2(D)	**TRUE COPY OF THE -DO- FOR THE MONTH OF MARCH 2005**
EXT.P3	**TRUE COPY OF THE STAFF FIXATION ORDER OF THE ASST. EDL. OFFICER, TALIPARAMBA SOUTH**
EXT.P4	**TRUE COPY OF THE VISIT NOTE OF THE DIST. EDL. OFFICER, KANNUR**
EXT.P5	**TRUE COPY OF THE COUNTER FOIL OF THE TRANSFER CERTIFICATE**
EXT.P6	**TRUE COPY OF THE CIRCULAR NO.SC(1)/29041/2001/DPI OF THE DIRECTOR OF PUBLIC INSTRUCTION.**
EXT.P7	**TRUE COPY OF THE INSPECTION DIARY(PROVING THE PRE-KER STATUS)**
EXT.P8	**TRUE COPY OF THE ORDER NO.D.DIS.68951/01/RA3/DPI OF THE SECOND RESPONDENT.**
EXT.P9	**TRUE COPY OF THE ORDER NO.D.DIS.B5/23242/04 OF THE THIRD RESPONDENT.**
EXT.P10	**TRUE COPY OF THE ORDER NO.71676/P3/05/GED OF THE GOVT.**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).No. 14043 OF 2006

Dated this the 9th day of January, 2007.

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner was appointed as Assistant Teacher in an additional division post from 18-11-2004. Proposals were submitted by the Manager within the time, but the Assistant Educational Officer returned the same holding that one pupil left with Transfer Certificate on 20-07-04. Manager preferred appeal to the concerned higher authority and it is dismissed by Ext.P9. Against that petitioner has preferred a representation dated 14-11-2005. Ext.P9 is the order of the Deputy Director of Education dated 16-10-2004. Ext.P10 is the Government order dated 27-04-2006. In Ext.P10 it is stated that the sixth respondent in this writ petition has filed W.P.(C)No. 29160/04 for a direction not to sanction an additional division to standard III for 2004-2005

until the disposal of the said writ petition. Government took note of the fact that this court had passed an order "interim order extended until further orders". It is noted that appointment of the petitioner was made while the stay was in force and Government found that it is not proper to pursue further in this till the disposal of the writ petition and therefore a final decision can be taken only after vacating the above stay order. No doubt petitioner had approached this court earlier by filing W.P.(C)No.33578/05. Therein, this court has directed the Government to hear the petitioner and anybody else who according to the Government will also be concerned in accordance with law within ten weeks. Pursuant to that Ext.P10 was passed.

2. Learned counsel for the petitioner would contend that a perusal of Ext.P10 will make it clear that it is only for the reason that the writ petition filed by the sixth respondent is pending and interim order passed therein, a decision on the merits of the case of petitioner was not taken up. He would submit that it was disposed

of on 29-09-05 by Ext.R7(e). It is pointed out that Ext.P10 is dated 27-04-2006. He would submit that there is no basis for observing that the writ petition is pending and decision on Ext.P8 could be taken up only after vacating the interim order, in view of the fact that as on the date of Ext.P10, the writ petition was disposed of on 29-09-05. He would therefore submit that this court may direct a decision to be taken on Ext.P8 as in fact was contemplated by the Government itself in Ext.P10 (Ext.P8 in W.P.(C)No.33578/05).

3. Respondent No.6 is the manager and respondent No.8 is the appointee of the sixth respondent against the alleged retirement vacancy which according to the manager arose on 31-03-06. He would contend that actually the then manager had preferred a revision under Rule 12 E (iii) of Chapter XXIII before the DPI and Ext.R7(i) order dated 21-03-06 would show that the matter has been dismissed. He would submit that there is no point in remitting it back. Learned counsel for the petitioner would submit

that earlier, Government have not considered the petitioner's case only on account of the alleged pendency of the writ petition No.29160/04 and the interim order passed therein.

4. Having heard learned counsel for the petitioner and the learned Government Pleader, the writ petition is disposed of as follows:

In view of the fact that W.P.(C)No.29160/04 had already been disposed of by Ext.R7(e), I feel that a decision should be taken by the Government in the matter in accordance with law after hearing the petitioner and respondents 7 and 8. There will be a direction to the first respondent to take up Ext.P8 in W.P.(C)No. 33578/05 and take a decision as contemplated in Ext.P10 in accordance with law within a period of six weeks from the date of receipt of a copy of this judgment. It will be open to respondents 7 and 8 to raise all their contentions including the contention that the matter is concluded by passing Ext.R7(i) order and the fact that it has become final. It is pointed out on behalf of

respondents 6,7 and 8 that approval of appointment of the 8th respondent is held up only on account of the pendency of the matter and that Educational authority may be directed to take a decision in the matter relating to the approval of appointment of the 8th respondent on the basis of the decision to be taken by the Government. Accordingly, the Educational authority concerned will take a decision in the matter of approval of appointment of the 8th respondent on the basis of the decision to be taken by the Government as aforesaid.

Writ petition is disposed of as above.

K.M.JOSEPH
JUDGE.

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